

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

DELTA CHAPTER OF PSI PHI
FRATERNITY, INC.,

Case No. 03-16630

Debtor.

DELTA CHAPTER OF PSI PHI
FRATERNITY, INC.,

Plaintiff,

-against-

Adversary Pro. No.: 03-90378

ST. LAWRENCE COUNTY,

Defendant.

APPEARANCES:

ANTONUCCI LAW FIRM
Attorneys for Plaintiff
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48 Court Street
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Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

Presently before the court is the adversary complaint of Delta Chapter of PSI PHI Fraternity, Inc. (the “Debtor”) against St. Lawrence County (“Defendant”) to determine the validity of a tax lien

pursuant to United States Bankruptcy Code, 11 U.S.C. §§ 101–1330 (“Code”), §§ 505 and 506.^{1 2}

JURISDICTION

The court has jurisdiction over the parties and subject matter of this core proceeding pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(K), and 1334.

FACTS

The relevant facts, as submitted by a stipulation of the parties dated December 15, 2004,³ are as follows:

1. The Debtor filed a Voluntary Petition for Chapter 11 relief on October 3, 2003, and remains a debtor-in-possession at this time.
2. The Debtor is a not-for-profit corporation organized pursuant to the Laws of the State of New York.
3. The Debtor is a recognized organization of and affiliated with the State University of New York College at Potsdam (“SUNY Potsdam”).
4. The Debtor owns certain real property located at 15 Bay Street, Potsdam, St. Lawrence County, State of New York (hereinafter referred to as the “Subject Property”). The Subject Property is not located upon the campus lands of any College, University, including SUNY Potsdam, or other not-for-profit corporation.
5. The Subject Property has a first lien in favor of St. Lawrence County, which constitutes the only lien on the same. The lien in favor of St. Lawrence County has an approximate

¹ As a preliminary matter, since the adversary complaint fails to raise a valid Code § 506 question, the court *sua sponte* dismisses the Debtor’s Code § 506 claim for failure to state a cause of action under which relief can be granted. *See* FED.R.BANKR.P. 7012(b) (stating, *inter alia*, that FED.R.CIV.P. 12(b)(6) applies in adversary proceedings).

² Pursuant to the court’s March 15, 2004 Scheduling Order, the court conducted a pretrial conference on October 12, 2004. After several adjournments, the parties agreed that the only questions to be adjudicated were ones of law appropriate for submission. Thus, the court will treat the parties’ submissions as cross motions for summary judgment on the Code § 505(a)(1) cause of action to determine the legality of the tax lien.

³ The court has made minor grammatical and stylistic corrections to the parties’ Stipulation of Uncontested Facts. (*See Stipulation of Uncontested Facts*, Dkt. No. 9.)

principal balance of \$49,697.10 as of October 31, 2004, and it is for unpaid school, town, village and county real property taxes.

6. The lien is secured by title. The title is subject to redemption in accordance with Local Law.
7. The Subject Property is improved by a residence; it is not improved by any other special commercial facilities, public meeting places, or sports facilities.
8. The Debtor provides housing to its members; it does not provide meals at the residence.
9. The assessed valuation of the Subject Property is not contested.
10. SUNY Potsdam does not control the Debtor's membership nor does it have the authority to assign students to reside in the Debtor's premises.
11. Individuals who wish to become members of the Debtor attend certain Debtor-sponsored events, where they sign a bid form which is processed through the Office of Student Affairs. The Office of Student Affairs determines whether they are in good academic standing (2.0 grade point average and 12 hours of academic study in the previous semester) and, therefore, eligible to pledge. If this requirement is met, the Office of Student Affairs notifies the Fraternity or Sorority that the student is eligible to pledge the Fraternity or Sorority.
12. The Debtor or its members engage in the following social activities: functions with other fraternities; outdoor activities; various sports; boating; formals; regatta; and alumni weekend.
13. The Debtor or its members engage in the following academic activities: classes; academic honor studies; mandated study hours; mentoring and tutoring; serving as advisors; and student government.
14. The Debtor or its members engage in fund-raising activities; for the past five years, they have conducted alumni fund-raising drives and have worked for campusfundraiser.com.
15. As of October 5, 2004, the Debtor had only five active members: Scott Provensal, Joe Gaffen, Josh Galluch, Jason Brotea, and Mike Inzerillo.
16. The Debtor has an active alumni association comprised of the following individuals: Glen Zagorski, Michael Inzerillo, Michael Davidson, Thomas Floor, and Dave Rosen.
17. Over the last five years, the Debtor's membership has included: Tom Mangan; Jeff Spencer; Chris Morris; Jeff Smith; Derrick Pomainville; Eric Doer; Matthew Lasher; Jacob Riverra; Jared Skarup; Joshua Spiegel; Jim Peil; Robert Johnson; Zach DeLap; Joel Childs; Shaun Crandle; Mike Avella; Steve Burke; Scott Hewlett; Allen Patterson; Nick Cechetto; Josh Galluch; Scott Provensal; Nicholas Sciolino; William Alesi; Jason Brotca; Joe Gaffen; Bryan

Eleferion; Daron Farina; C.J. Sportswood; and Matthew Waldron.

ARGUMENTS

The Debtor argues that the Subject Property is exempt from taxation pursuant to New York Real Property Tax Law (“RPTL”) § 420-a, which states in relevant part:

Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.

N.Y. REAL PROP. TAX LAW § 420-a(1)(a) (2005). According to the Debtor, it was incorporated and exists to fulfill the “clear aims” set forth within the above statute—the “moral, mental and educational improvement of men.” (Mem. of Law of Plaintiff/Debtor in Supp. of Mot. for Summ. J. at 5.) The Debtor states that “[n]o activities are set forth in [its] certificate of incorporation that would inure to the profit or personal gain of any individual member. The [D]ebtor is a college fraternity in the most traditional sense.” (*Id.*) Thus, the Debtor argues that the first statutory requirement is satisfied. Further, the Debtor contends that the second requirement is also met because its usage comports with statutory dictates. The Debtor acknowledges that its uses are “generally common to all fraternities” (*id.* at 6), yet it asks the court to adopt the broad definition of education set forth in *University of Rochester v. Wagner*, 63 A.D.2d 341 (N.Y. App. Div. 4th Dept. 1978), *aff’d*, 47 N.Y.2d 833 (N.Y. 1979).

For precisely the same reasons, i.e., the Debtor is a college fraternity in the most traditional sense and its usage is generally common to all fraternities, the Defendant argues that the Subject Property is properly included on the tax rolls. As a general rule, the Defendant contends that

fraternities are not tax exempt because, in most cases, their actual usage extends beyond formal education and activities incidental thereto. (Br. on Behalf of Def. St. Lawrence County at 6.) The Defendant asserts that the general rule should be followed in this case. Further, the Defendant suggests that *University of Rochester v. Wagner* has no bearing here since the University of Rochester had ownership of and control over the fraternity houses in question in that case. Alternatively, the Defendant contends that the court need not even reach the merits of the case because the Debtor's tax exempt challenge was not timely made pursuant to RPTL § 702(2), which requires commencement of such a proceeding within 30 days after the final completion and filing of the assessment roll containing such assessment. (*Id.* at 5.)

DISCUSSION

Under Federal Rule of Civil Procedure 56(c), as made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056, entry of summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In this case, for reasons discussed *infra*, entry of summary judgment is appropriate against the Debtor.⁴

The *University of Rochester v. Wagner* provides an excellent summary of decisional law on the question at hand, but its holding cannot be extended to the case *sub judice*. The test for tax-exempt status is, however, clearly articulated by the court therein: first, the corporation’s stated purposes of organization and its actual practices must fit within the statutory criteria; and second,

⁴ The court need not address the Defendant’s procedural defense that the Debtor’s challenge was untimely made since consideration of the merits will not prejudice the Defendant.

the realty in question must be used exclusively for exempt corporate purposes. *Wagner*, 63 A.D.2d at 348. Under the second test, “it must be shown that the particular use of the property is ‘reasonably incident’ to the owner’s exempt purposes.” *Id.* (citing cases). There is, of course, a presumption in favor of assessments, *see Cornell Univ. v. Thorne et al.*, 57 N.Y.S.2d 6, 8 (N.Y. Sup. Ct. 1945); therefore, the test must be rigidly applied. Because tax exemptions are to be strictly construed against those arguing for non-taxability, if there is any uncertainty about a corporation’s eligibility for tax-exempt status, all doubt must be resolved against the exemption. *See id.*

The Debtor’s causes of action fail because the Debtor is not organized and the Subject Property is not used exclusively for educational purposes. The Debtor has provided the court with a copy of the SUNY Potsdam Fraternity and Sorority Recognition and Governance policy (the “Recognition Policy”) (*see Stipulation of Uncontested Facts*, Ex. A), but that is not enough to meet its burden; while SUNY Potsdam acknowledges, *inter alia*, that social/service fraternities and sororities can have a positive impact on the educational and social experiences of members and others within the campus community, the policy makes clear that “[r]ecognition is the formal process by which the College agrees that a fraternity or sorority may function on campus, enroll members and identify with the College.” (*Id.* at 1.) Recognition is clearly a benefit within the university setting, but the Recognition Policy has no bearing or preemptive effect on the laws of the State of New York. In other words, mere recognition by SUNY Potsdam, without other persuasive factors, is clearly insufficient to meet the tests of RPTL § 420-a.

The Debtor has proclaimed itself to be a “traditional fraternity” and both history and common sense lead to the inescapable conclusion that education is not the foremost concern of traditional college fraternities. One court has described college fraternities as “club house[es]” or

places for “rest, recreation, and fraternal intercourse,” *People ex. rel. Delta Kappa Epsilon Soc. of Hamilton Coll. v. Lawler et al.*, 77 N.Y.S. 840, 843 (N.Y. App. Div. 4th Dept. 1902), *aff’d*, 71 N.E. 1136 (N.Y. 1904); considering the passage of more than one hundred years, even that definition may now be outdated, or at the very least, conservative.

Aside from the Debtor’s blanket assertions that it is entitled to tax-exempt status, the record is thin. Although the Debtor references its corporate documents, none of them are before the court. Its only hope, therefore, is that this court will adopt the holding of *University of Rochester v. Wagner*. Unfortunately for the Debtor, it has not shown that it is similarly situated to the fraternity houses found to have been tax exempt in that case. This court does not disagree that deviation from the general rule may be warranted when the educational institution owns the fraternity houses or possesses sufficient other control over the houses to such an extent that they are part of the educational process, but those facts do not exist in the present case. The University of Rochester, for example, had complete control over the fraternity houses in question and could assign students at will to reside in them. They functioned, in effect, as dormitories of the school. In the instant case, the fraternity is an independent entity under its own power accepting students of its choosing and pursuing its own agenda. Operating under its own strictures, it is much more akin to a “club house” than to a dormitory. As such, it must accept the burden of taxation.

CONCLUSION

For all of the above reasons, the Defendant’s motion for summary judgment is granted.

It is so ORDERED.

Albany, New York

Dated: 6/30/05

/s/ Robert E. Littlefield, Jr.
Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge